

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY CIVIL TERM:

-----X
MARCIANA SIMMONS-EL,

Plaintiff,

Index No.

- against -

**VERIFIED
COMPLAINT**
DATE INDEX NUMBER
PURCHASED:

THE CITY OF NEW YORK, POLICE OFFICER GABRIEL
BAAITH and POLICE OFFICER JOHN DOE,

Defendants,
-----X

PARTIES, JURISDICTION and VENUE

1. Plaintiff, MARCIANA SIMMONS-EL, is a sixty-eight year old female and is a citizen of the State of New York, and resident of Bronx County, who has never before been arrested.
2. Defendant, City of New York ("NYC"), is a municipality within the State of New York, which includes Bronx County.
3. Defendant, NYC maintains an agency known as the New York City Police Department ("NYPD"), responsible for, *inter alia*, law enforcement in New York City.
4. Upon information and belief, Defendant Police Officer GABRIEL BAAITH, shield number and tax identification number unknown, was at all relevant times an officer with the NYPD, assigned to the 46st Precinct. BAAITH is being sued in both his official and individual capacities.

6. Police Officer JOHN DOE, is and was at all relevant times a police officer with the NYPD assigned to the 46th Precinct, and who acted along with BAAITH on the date of the incident and whose actual name is unknown at this time. Doe is being sued in both his official and individual capacities.
7. This court has jurisdiction over this action as Plaintiff resides in Bronx County and the damages sought exceed the maximum jurisdiction of all lower courts.
8. Venue is properly laid in this court as it is the resident county of Plaintiff and all relevant events occurred in Bronx County.
9. A Notice of Claim was timely served upon NYC on or about January 21, 2009, within ninety days of October 28, 2008, the date of accrual of the causes of action. A 50 -H hearing was held March 24, 2009.
10. More than thirty days have passed since the Notice of Claim was served and there has been no resolution of the claim.
11. The instant action is being commenced within one year and ninety days of the date of accrual.

FACTS GIVING RISE TO THE CAUSES OF ACTION

12. On or about October 28, 2008, Plaintiff resided at 1740 Weeks Avenue , 2nd floor Bronx, New York, in a multi-family dwelling the she had owned for decades.
13. At approximately 6:00 a.m., Plaintiff looked out her front window and saw BAAITH and DOE in a marked police vehicle.
14. Plaintiff spoke from her window to BAAITH and DOE, who asked her to come down to the first floor of her building.
15. Plaintiff voluntarily agreed to do so and met Defendants in the vestibule area of

the building. That area was separated from the building entrance by a locked door.

16. Defendants began to question Plaintiff about an individual whom they said lived in the building. Plaintiff told Defendants that they were mistaken and that person did not live in her building.
17. Defendants then asked for her keys so that they could open the locked door enter the building. When Plaintiff turned away from them, BAAITH grabbed her arm, pushed her against the wall, and leaned on her body. As DOE also pushed her body, he grabbed her keys and let himself into the building.
18. BAAITH handcuffed Plaintiff as DOE entered her building and proceeded to approach the first-floor apartment and to knock on the door. BAAITH refused to remove the handcuffs, despite her indications to him that she was in great pain.
18. BAAITH brought Plaintiff through the entrance door and she saw DOE and BAAITH speak to her cousin Cesar Guerrero, who resided in the first-floor apartment.
19. After they finished speaking with Guerrero, Defendants gave Plaintiff's house keys to Guerrero and BAAITH removed the handcuffs from Plaintiff's wrists.
20. Neither Plaintiff nor Guerrero was arrested and the two officers left the location.
21. As a result of the unprovoked and illegal attack, Plaintiff has suffered severe injuries to her arms, shoulders, back, neck, face, hands, teeth, and wrists and continues to suffer pain, limitation of motion, and emotional distress.

FIRST CAUSE OF ACTION

22. Paragraphs 1 through 21 are incorporated herein pursuant to CPLR § 3014 with

the same force and effect as if pleaded separately.

23. The intentional attack of Plaintiff by BAAITH and DOE was committed without legal cause or justification and constituted an assault and battery.
24. By reason thereof, Defendants have caused Plaintiff to suffer the loss of her constitutional rights, physical injury, emotional distress, mental anguish and monetary damages.

SECOND CAUSE OF ACTION

25. Paragraphs 1 through 24 are incorporated herein pursuant to CPLR § 3014 with the same force and effect as if pleaded separately.
26. The conduct of BAAITH and DOE in attacking Plaintiff constituted the use of excessive force in the performance of their police duties.
27. By reason thereof, Defendants have caused Plaintiff to suffer the loss of her constitutional rights, physical injury, emotional distress, mental anguish and monetary damages.

THIRD CAUSE OF ACTION

28. Paragraphs 1 through 27 are incorporated herein pursuant to CPLR § 3014 with the same force and effect as if pleaded separately.
29. Defendants BAAITH and DOE, by using excessive force and engaging in assaultive conduct, violated Plaintiff's rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitutions.
31. By reason thereof, Defendants have violated 42 U.S.C. §1983 and caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

FOURTH CAUSE OF ACTION

- 32. Paragraphs 1-31 are incorporated herein pursuant to CPLR Section 3014 with the same force and effect as if pleaded separately.
- 33. Plaintiff was unlawfully detained and arrested without probable cause.
- 34. By reason thereof, Defendants have caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

FIFTH CAUSE OF ACTION

- 35. Paragraphs 1-34 are incorporated herein pursuant to CPLR Section 3014 with the same force and effect as if pleaded separately.
- 36. By arresting Plaintiff without probable cause, Defendants conspired to violate and aided and abetted in the violation of Plaintiff's rights under Article 1 Section 11,12 of the Constitution of the State of New York. Specifically: the constitutional right to be free from excessive force and false arrest.
- 37. By reason thereof, Defendants have caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

SIXTH CAUSE OF ACTION

- 38. Paragraphs 1-37 are incorporated herein pursuant to CPLR Section 3014 with the same force and effect as if pleaded separately.
- 39. By arresting Plaintiff without probable cause, Defendants conspired to violate and aided and abetted in the violation of Plaintiff's rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution. Specifically: the constitutional right to be free from excessive force and false arrest.

40. By reason thereof, Defendants have violated 42 U.S.C. §1983 and caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

SEVENTH CAUSE OF ACTION

41. Paragraphs 1-40 are incorporated herein pursuant to CPLR Section 3014 with the same force and effect as if pleaded separately.
42. NYC and NYPD had a duty to competently and sufficiently train, supervise and discipline the individual defendants to assure that their conduct conformed to a standard, established by law, for the protection of citizens, such as Plaintiff, against the unreasonable risk of harm by conducting themselves in such a manner as to not intentionally, wantonly, and/or negligently inflict injuries to citizens such as the Plaintiff herein.
43. NYC and NYPD had previously received complaints about and had knowledge of the improper behavior and disciplinary infractions of the individual Defendants or, in the exercise of due diligence, would have perceived that these officers had conduct and/or disciplinary problems that posed an unreasonable risk of harm to the Plaintiff.
44. The failure of NYC and NYPD to take preventive and remedial measures that could have protected Plaintiff from sustaining the injuries that she did constituted gross negligence, deliberated indifference or intentional misconduct.
45. By reason thereof, Defendants have violated 42 U.S.C. §1983 and caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

EIGHTH CAUSE OF ACTION

46. Paragraphs 1-45 are incorporated herein pursuant to CPLR Section 3014 with the same force and effect as if pleaded separately.
47. NYC and NYPD have a duty to properly investigate and punish the assaultive and abusive conduct of their employees.
48. Instead, NYC and NYPD tolerate and sanction a systematic level of brutality as a means of conveying authority and power over its citizenry. It is the policy and practice of NYC and NYPD to apply minimal or no discipline against those officers found to have acted improperly.
49. In addition, NYC and NYPD condone a pattern and practice of covering-up brutality, thereby making the "blue wall of silence" an obstacle to those so brutalized.
50. By reason thereof, Defendants have violated 42 U.S.C. §1983 and caused Plaintiff emotional suffering, physical injury, mental anguish and monetary damages.

WHEREFORE, the Plaintiff demands judgment against Defendants as follows:

- i) On the first cause of action, actual and punitive damages in an amount to be determined at trial;
- ii) On the second cause of action, actual and punitive damages in an amount to be determined at trial;
- iii) On the third cause of action, actual and punitive damages in an amount to be determined at trial;
- iv) On the fourth cause of action, actual and punitive damages in an amount

to be determined at trial;

v) On the fifth cause of action, actual and punitive damages in an amount to be determined at trial;

vi) On the sixth cause of action, actual and punitive damages in an amount to be determined at trial;

vii) On the seventh cause of action, actual and punitive damages in an amount to be determined at trial;

viii) On the eighth cause of action, actual and punitive damages in an amount to be determined at trial;

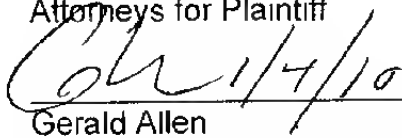
ix) Statutory attorney's fees and disbursements pursuant to 42 USC 1988, together with the costs of this action.

x) Such other relief as the Court deems just and proper.

Dated: New York, New York
January 4, 2010

Goldberg & Allen, LLP
Attorneys for Plaintiff

By:

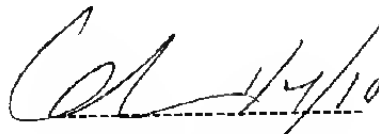

Gerald Allen
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ATTORNEY'S VERIFICATION

STATE OF NEW YORK) ss:
COUNTY OF NEW YORK)

Gerald Allen, being duly sworn, affirms and says,

That I am an attorney in the law firm of Goldberg & Allen, LLP, counsel to the Plaintiff herein; and I make this verification because Plaintiff does not reside in the County where Affirmant maintains his Office and that I have read the foregoing Summons and Verified Complaint and knows the contents thereof; that same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matter I believes them to be true.



GERALD ALLEN